



Commonwealth of Virginia

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SCOTT COUNTY PUBLIC SERVICE AUTHORITY
FOR
NICKELSVILLE WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0087955**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Scott County Public Service Authority, regarding the Nickelsville Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters. The "303(d) report" is a subset of the "305(b) report".
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
6. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. “DMR” means Discharge Monitoring Report.
8. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. “Facility”, “Plant” or “WWTP” means the Nickelsville Wastewater Treatment Plant, located at 890 Dean Hollow Road, Nickelsville, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Nickelsville.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
12. “Permit” means VPDES Permit No. VA0087955, which was reissued under the State Water Control Law and the Regulation to the Town of Nickelsville on November 1, 2018, transferred to the Scott County Public Service Authority through Minor Modification on July 30, 2019, and which expires on October 31, 2023.
13. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

14. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.
15. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. “Scott County PSA” or “PSA” means the Scott County Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* The Scott County Public Service Authority is a “person” within the meaning of Va. Code § 62.1-44.3.
17. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means the Virginia Administrative Code.
22. “VPDES” means Virginia Pollutant Discharge Elimination System.
23. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The Scott County PSA owns and operates the WWTP. The Permit allows the PSA to discharge treated sewage and other municipal wastes from the WWTP, to Copper Creek, in strict compliance with the terms and conditions of the Permit.

2. Copper Creek is located in the Tennessee-Big Sandy River Basin, Clinch-Powell Subbasin, Section 2, Class IV, Special Standards: None. This segment of Copper Creek is listed on the 303(d)/305(b) report as impaired for failure to support the recreation use due to exceedance of the water quality standard for bacteria. The *Bacterial TMDL Development Clinch River and Cove Creek Watershed, VA* was approved by EPA on April 24, 2014 and by the SWCB on June 30, 2014.
3. The PSA submitted DMRs for Outfall 001 to SWRO with data indicating that effluent limits set forth in Part I.A.1 of the Permit had been exceeded, as described by the following data results:

Parameter	Observations – DMR Monitoring Period and Relevant Reported Monitoring Results												Permit Limit
	Jan 2021	Mar 2021	Apr 2021	May 2021	Jun 2021	Jul 2021	Aug 2021	Sep 2021	Oct 2021	Nov 2021	Dec 2021	Jan 2022	
039 Ammonia AS N maximum concentration	17.5	21.3	27.7	30.1	27.0	18.9	23.2	53.3	40.6	37.4	33.9	16.5	11
039 Ammonia AS N average concentration		11.97		25.05	18.98		13.28	25.82	32.35	25.76	28.48	12.32	11
120 E. coli average concentration							196.8	2071.3	360.2				126

4. On March 5, 2021, DEQ issued WL No. W2021-03-S-1003 to the PSA, citing the January 2021 violation of permitted effluent limits, as described in the table, above.
5. On April 19, 2021, the PSA submitted a written response to the March 5, 2021 WL. The response attributed the January 2021 ammonia effluent limit violation to disrepair of the Facility's aeration system. The PSA stated that it had made temporary repairs to the aeration system in attempt to keep it functional until permanent repairs or replacement can be achieved through completion of the Nickelsville WWTP Improvements Project, to be funded by the DEQ Clean Water Revolving Loan Fund (CWRLF) program.
6. On April 29, 2021, DEQ issued WL No. W2021-04-S-1008 to the PSA, citing a March 2021 violation of permitted effluent limits and failure to conduct ammonia monitoring at the frequency required by the Permit.
7. On May 13, 2021, the PSA submitted a written response to the April 29, 2021 WL. The response attributed the March 2021 ammonia effluent limit violation to disrepair of the Facility's aeration system and indicated that the Nickelsville WWTP Improvements Project, which included replacement of the aeration system, had been delayed. Failure to conduct ammonia monitoring at the required frequency was attributed to receipt of analyses results from the testing lab after the DMR submittal deadline date each month.

The PSA stated that it had contacted the testing lab to request that results be received prior to the deadline date each month. The PSA response also included results for the missing ammonia analyses and advised that the PSA would submit amended DMRs to DEQ upon request. SWRO compliance staff verified that amended DMRs were submitted by the PSA on May 26, 2021. The amended DMRs included updated ammonia data for March 2021, which resulted in a discrepancy between the data included in the respective WL and the data included in the table, above.

8. On June 2, 2021, DEQ issued WL No. W2021-06-S-1002 to the PSA, citing the April 2021 violation of permitted effluent limits, as described in the table, above.
9. On July 8, 2021, DEQ issued the Certificate to Construct to the PSA for the Nickelsville WWTP Improvements Project.
10. On July 22, 2021, DEQ issued NOV No. W2021-07-S-0002 to the PSA, citing the January 2021 and March through June 2021 violations of permitted effluent limits, as described in paragraph C(3), above. While not cited in a WL or NOV, the July through December 2021 and January 2022 effluent limit violations, as described in paragraph C(3), are also covered by this Order.

The Permit, at Part I, Section A, sets forth the final effluent parameter limits.

Va. Code § 62.1-44.5 states, in part: “Except in compliance with a certificate or permit issued by the Board..., it shall be unlawful for any person to... [d]ischarge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances...”

The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

11. On July 27, 2021, SWRO enforcement staff discussed the NOV with the PSA via telephone. The PSA advised that it would provide a follow up written response to the NOV.
12. On August 13, 2021, the PSA submitted a written response to the NOV. The response stated that the effluent limit violations cited in the NOV were attributable to the degraded condition of the air piping associated with the Facility aeration system. The PSA advised that the aeration system issues are to be addressed by the Nickelsville WWTP Improvements Project, which had been advertised for bids at the time of the correspondence. The PSA stated that it would be opening bids for the project prior to the end of August 2021 and that it anticipated construction would begin in October 2021, with an estimated completion date of October 2022.

13. On August 31, 2021, the PSA received bids for the Nickelsville WWTP Improvements Project. The low bid was nearly four times greater than the engineer's estimate for the project and was subsequently rejected by the PSA so that the project could be re-advertised for bids.
14. On November 2, 2021, the PSA received bids for the re-advertised project. The low bid was more than two times greater than the engineer's estimate, which made it necessary for the PSA to solicit additional funding through the CWRLF program. The PSA requested additional funding by letter, dated November 15, 2021. The additional funding was approved by DEQ on December 1, 2021.
15. On February 14, 2022, the PSA provided a revised project schedule to DEQ enforcement staff via email.
16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
17. The Department has issued no permits or certificates to the PSA for the Nickelsville WWTP other than VPDES Permit No. VA0087955.
18. Copper Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
19. Based on the monthly DMRs submitted to DEQ by the PSA and the August 13, 2021 correspondence to DEQ from the PSA, the Board concludes that the Scott County PSA has violated the Permit, Va. Code § 62.1-44.5, and the Regulation 9 VAC 25-31-50, by discharging treated and partially treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(12), above.
20. In order for the PSA to complete its return to compliance, DEQ staff and representatives of the PSA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Scott County Public Service Authority, and the Scott County Public Service Authority agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Scott County PSA for good cause shown by the PSA, or on its own motion pursuant to the

Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2021-07-S-0002, dated July 22, 2021, WL No. W2021-06-S-1002, dated June 2, 2021, WL No. W2021-04-S-1008, dated April 29, 2021, and WL No. W2021-03-S-1003, dated March 5, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the PSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The PSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The PSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the PSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The PSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The PSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The PSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

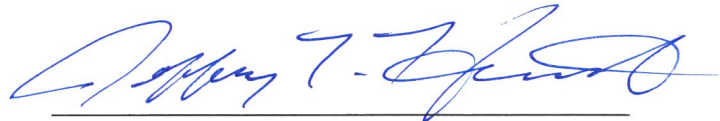
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the PSA. Nevertheless, the PSA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the PSA has completed all of the requirements of the Order;
 - b. the PSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the PSA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the PSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the PSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of the PSA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the PSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the PSA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the PSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22nd day of April, 2022.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

The Scott County Public Service Authority voluntarily agrees to the issuance of this Order.

Date: FEB 22, 2022 By: C. M. Dishner, EXEC. DIRECTOR
(Person) (Title)
Scott County Public Service Authority

Commonwealth of Virginia

City/County of Scott

The foregoing document was signed and acknowledged before me this 22nd day of
February, 20 22, by C. M. Dishner who is
Executive Director of the Scott County Public Service Authority, on behalf of
the Authority.

Melinda June Earwood
Notary Public

244627
Registration No.

My commission expires: 4/30/2024

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law, the Regulation, and the Permit, the Scott County PSA agrees to implement the following actions by the dates noted below:

1. Issue Notice to Proceed for the Nickelsville Wastewater Treatment Plant Improvements Project within 90 days of the effective date of this Order.
2. Achieve substantial completion for the Nickelsville Wastewater Treatment Plant Improvements Project by March 1, 2023.
3. Achieve final completion and obtain the Certificate to Operate for the Nickelsville Wastewater Treatment Plant Improvements Project by June 1, 2023.
4. Submit quarterly progress reports to DEQ. The reports shall be received no later than the 10th day of the month following the quarter (e.g., the report for the reporting period April 1, 2022 through June 30, 2022 shall be due by July 10, 2022).

Unless otherwise specified in this Order, the PSA shall submit all requirements of Appendix A of this Order to:

Ruby Scott
Compliance Auditor
Virginia DEQ – Southwest Regional Office
355-A Deadmore Street
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